

Mullaney, Arielle (EPS)

From: Bennett, Daniel (EPS)
Sent: Monday, July 09, 2018 2:49 PM
To: Bennett, Daniel (EPS)
Subject: Updated Guidance for Law Enforcement Regarding the Legalization of Adult Use Marijuana
Attachments: EOPSS Updated Marijuana Guidance (9JUL18).pdf

Dear Chiefs:

Attached please find the updated guidance for law enforcement regarding the legalization of adult-use marijuana.

Sincerely,

Dan Bennett
Secretary of Public Safety and Security



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
One Ashburton Place, Room 2133
Boston, Massachusetts 02108

Tel: (617) 727-7775
TTY Tel: (617) 727-6618
Fax: (617) 727-4764
www.mass.gov/eopss

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor

DANIEL BENNETT
Secretary

July 9, 2018

Re: Updated Guidance for Law Enforcement Regarding the Legalization of Adult Use Marijuana

Dear Chief:

I am writing to offer updated guidance about the way that the legalization of adult-use marijuana will affect the way you and your officers enforce state laws regarding marijuana, especially as they pertain to medical and adult use of marijuana.

As you know, the voters of the Commonwealth approved ballot initiative Question 4 in November 2016, which legalized the use and possession of recreational or “adult use” marijuana within certain limits for persons 21 or older. On December 14, 2016, I provided written guidance on immediate changes to the criminal laws concerning personal use and cultivation of marijuana that became effective at that time as a result of the ballot initiative. The guidance focused on changes that made it legal under state law for persons 21 or older to possess up to an ounce of marijuana and to cultivate larger amounts of marijuana for personal use within the home, subject to certain limitations. Eight months later, the Legislature passed Chapter 55 of the Acts of 2017, which amended the terms of the ballot initiative in a number of important ways. Most of these amendments involved modifications to provisions governing the licensing and regulation of commercial marijuana businesses, including requirements around security of marijuana establishments and background checks of entities and individuals, but they also included some changes to provisions concerning personal use and the penalties that apply to violations of those personal use provisions.

This updated guidance incorporates the amendments to the adult use marijuana law made by Chapter 55. Most of the guidance provided in my original December 14, 2016 letter remains valid, and is included below. I have, however, attempted to highlight changes to provisions that were first adopted in the ballot initiative but will now be treated differently: new provisions dealing with matters not addressed in the ballot initiative and changes to provisions adopted in the ballot initiative but now treated differently. I have also added information about the ongoing medical use of marijuana.

Fundamentally, the statutory scheme articulated in G.L. c. 94G for legalized adult use functions to carve out exceptions from the otherwise prohibited and criminal conduct established in G.L. c. 94C. Accordingly, if conduct is explicitly permitted by G.L. c. 94G, primarily sections 2 and 7 for personal use or section 9 for licensed establishments, it should no longer be seen as a basis for formulating reasonable suspicion or initiating a threshold inquiry. Alternatively, if conduct is not permitted by G.L. c. 94G, such conduct remains prohibited pursuant to G.L. c. 94C.

The broad changes in the laws governing marijuana use and possession in the Commonwealth enacted by the ballot initiative and by the Chapter 55 amendments have required police departments to reassess how they evaluate the presence of reasonable suspicion and probable cause, and, as a result, how they proceed in evaluating potentially criminal conduct where marijuana is at issue. This letter is intended to assist your department in continuing to manage that change.

Below are some of the situations you and your departments will encounter, and an explanation of how the existing laws regarding the medical use of marijuana laws and the updated adult use marijuana law will apply in practice. Please note that this letter is not intended to direct how your department elects to prioritize its enforcement efforts, but merely to provide guidance about what conduct is now legal, and what remains illegal under state law.

SIMPLE POSSESSION OF MARIJUANA OUTSIDE PRIMARY RESIDENCE: ONE OUNCE AND UNDER FOR ADULT USE; UP TO TEN OUNCES FOR MEDICAL USE

The law on this point remains unchanged from the ballot initiative. Under the adult use marijuana law, a person 21 years or older may now legally possess up to one ounce of marijuana outside his or her primary residence. Possession of marijuana concentrate (such as cannabis oil) is also now legal, but only in quantities of 5 grams or less. See G.L. c. 94G, § 7(a)(1). There are two applicable exceptions for medical use: (1) a registered patient with an active certification; and (2) a registered personal caregiver for a patient with an active certification.¹ A registered patient or personal caregiver is required to carry a Medical Use of Marijuana Program ID card when in possession of marijuana. The status of the patient's certification may be checked through CJIS. A registered patient with an active certification, or a registered personal caregiver acting on the patient's behalf, may have up to ten ounces or such other amount as is authorized by the patient's healthcare provider. 105 CMR 725.004, 725.010(I). A registered personal caregiver must always be 21 years of age or older. 105 CMR 725.020(A)(1).

The allowances provided by the adult use marijuana law means that possession of marijuana in these quantities is not merely decriminalized, but *fully legalized*. Accordingly, it is no longer lawful or appropriate for police to issue a civil citation to a person 21 years or older for possessing quantities of marijuana within these limits, as had been the lawful procedure since possession of small amounts of marijuana was decriminalized by the passage of Question 2 in 2008. It also is no longer lawful for police to seize small quantities of marijuana for forfeiture, as had been past practice, as these small quantities are longer considered contraband when possessed by a person 21 years of age or older. Accordingly, it is no longer appropriate for a police officer to initiate a threshold inquiry based merely on a reasonable belief that a person possesses a small quantity of marijuana, if the subject is not consuming the marijuana in a public place or a prohibited area, does not appear to be under the age of 21, and does not appear to be engaged in illegal distribution activity.

For persons between the ages of 18 and 21, possession of less than one ounce of marijuana is not fully legalized, but it will remain *decriminalized*, as it has been since the passage of Question 2 in 2008.

¹ A personal caregiver means a person, registered by the Department of Public Health, who is at least 21 years old, who has agreed to assist with a registered qualifying patient's medical use of marijuana, and is not the registered qualifying patient's certifying healthcare provider. A visiting nurse, personal care attendant, or home health aide providing care to a registered qualifying patient may serve as a personal caregiver, including to patients younger than 18 years old as a second caregiver. 105 CMR 725.004. In addition to registered personal caregivers, Department of Public Health regulations authorize registered institutional caregivers, who are employees of a hospice program, long term care facility or hospital providing care to a registered patient on the premises of a long term care facility, hospital or through a hospice program. 105 CMR 725.004, 725.022

In these cases, a civil citation will remain available, with a penalty of \$100, and any marijuana in the individual's possession will remain subject to forfeiture. There is an exception, however, for a registered patient with a Medical Use of Marijuana Program ID card and an active certification. As previously stated, a registered patient may possess up to 10 ounces of marijuana or such other amount authorized by the patient's healthcare provider. 105 CMR 725.004, 725.010(I).

For juveniles (those under the age of 18), possession of one ounce or less of marijuana likewise remains subject to forfeiture and a civil citation with a penalty of \$100, but with the additional requirement that the juvenile complete a drug awareness program. If the juvenile does not complete the program, the civil fine can be enhanced to \$1,000, for which the juvenile's parents may be held liable. See G.L. c. 94C, § 32L. Again, there is an exception for a registered patient with a Medical Use of Marijuana Program ID card and an active certification. Please note, however, that a registered patient who is a minor may not possess marijuana unless he or she is in the presence of his or her registered personal caregiver. 105 CMR 725.025(B)(5).

SIMPLE POSSESSION OF MARIJUANA OUTSIDE PRIMARY RESIDENCE: 1-2 OUNCES UNLESS FOR MEDICAL USE

As under the original provision of the ballot initiative, a person 21 years of age or older who possesses a quantity of marijuana greater than one ounce, but less than two ounces, outside his or her primary residence, may be subject to a civil citation and a penalty of not more than \$100, and the *excess* amount of marijuana possessed is subject to forfeiture, unless he or she is a registered patient with a Medical Use of Marijuana Program ID card and an active certification, or a registered personal caregiver acting on a patient's behalf. See G.L. c. 94G, § 13(e). Accordingly, if a person 21 years of age or older were discovered to possess 1 ½ ounces of marijuana outside his or her primary residence, a police officer could issue a civil citation and seize ½ ounce of the subject's marijuana, but not the entire quantity.

For persons between the ages of 18 and 21, possession of between one and two ounces of marijuana is not fully legalized, but it will remain *decriminalized*, as it has been since the passage of Question 2 in 2008. In these cases, a civil citation will remain available, with a penalty of \$100, and any marijuana in the individual's possession will remain subject to forfeiture. G.L. c. 94C, § 32L. Again, there is an exception for a registered patient with a Medical Use of Marijuana Program ID card and an active certification.

For juveniles (those under the age of 18), possession of between one and two ounces of marijuana likewise remains subject to forfeiture and a civil citation with a penalty of \$100, but with the additional requirement that the juvenile complete a drug awareness program. If the juvenile does not complete the program, the civil fine can be enhanced to \$1,000, for which the juvenile's parents may be held liable. See G.L. c. 94C, § 32L. As before, there is an exception for a registered patient with a Medical Use of Marijuana Program ID card and an active certification. Please note, however that a registered patient who is a minor may not possess marijuana unless they are in the presence of his or her registered personal caregiver. 105 CMR 725.025(B)(5).

SIMPLE POSSESSION OF MARIJUANA OUTSIDE PRIMARY RESIDENCE: OVER TWO OUNCES UNLESS FOR MEDICAL USE

A person of any age who possesses more than two ounces of marijuana outside of his or her primary residence remains subject to existing criminal penalties or delinquency proceedings in the case of juveniles. See G.L. c. 94C, §§ 32L, 34. The only exceptions to this rule are for a registered patient with a Medical Use of Marijuana Program ID card and an active certification, a registered caregiver acting on a

patient's behalf, or person employed as a registered dispensary agent,² a registered marijuana establishment agent or laboratory agent in the lawful operation of a registered marijuana dispensary, or adult use marijuana establishment properly licensed by the Cannabis Control Commission.³ Dispensary agents, marijuana establishment agents and laboratory agents are required to be registered with the Department of Public Health (for medical-use marijuana) and/or the Cannabis Control Commission (for adult use marijuana),⁴ and may be associated with more than one registered marijuana dispensary or marijuana establishment. However, agents must carry each registration card associated with the registered marijuana dispensary or marijuana establishment for which they are acting at all times while in possession of marijuana or marijuana products, including while they are on the premises of the associated establishment or transporting marijuana between establishments.

SCHOOLS AND GOVERNMENT BUILDINGS

The adult use marijuana law's limited allowance for possessing one ounce or less of marijuana outside of the home does not permit any person to possess any quantity of marijuana on the grounds of a public or private preschool or K-12 school, on a school bus, in a youth center, or on the grounds of (or within) any correctional or detoxification facility. See G.L. c. 94G, § 2(d)(3).

For persons over 21 who possess less than one ounce of marijuana on school grounds or on the grounds of a correctional facility, a civil penalty remains available pursuant to G.L. c. 94C, § 32L. For persons under 21, the same penalties applicable to possession of amounts under 2 ounces in other places apply (see discussion above).

Possession with intent to distribute marijuana while "in or on or within 300 feet" of the real property of a school, remains a School Zone Violation pursuant to G.L. c. 94C, § 32J.

Distribution of (or possession with intent to distribute) marijuana to a prisoner, or concealing marijuana in or about a penal institution with the intent that an inmate should obtain it, remain felony offenses for all persons pursuant to G.L. c. 268, § 28 and G.L. c. 268, § 31, respectively.

State and local governments retain the authority to prohibit possession of marijuana within their buildings, including city halls, police stations, and public housing facilities. See G.L. c. 94G, § 2(d)(2).

² A registered marijuana dispensary (also known as a medical marijuana treatment center or RMD) is devoted to marijuana for medical use. A marijuana establishment is devoted to marijuana for adult use. As of July 1, 2018, a business may be both. If you have questions about a particular business, you may contact the Cannabis Control Commission at (617) 701-8400 or cannabiscommission@state.ma.us about adult-use businesses or the Department of Public Health about medical businesses at (617) 660-5370 or medicalmarijuana@state.ma.us. After December 31, 2018, both inquiries should be directed to the Cannabis Control Commission.

³ DPH regulation 105 CMR 725 allows a treating physician or certified nurse practitioner (CNP) to certify a patient for up to 10 ounces of marijuana for a 60 day period. However, there is a provision which would allow the physician or CNP to prescribe more, with some conditions detailed in the regulations. Accordingly, a person with a medical marijuana card may hypothetically be in possession of 10 ounces or more on his or her person without being in violation of the law.

⁴ Authority for the medical-use program will transfer to the Cannabis Control Commission by or before December 31, 2018.

POSSESSION OF MARIJUANA OUTSIDE PRIMARY RESIDENCE
(Summary of preceding 4 sections)

	Under 1 Oz.	1-2 Oz.	Over 2 Oz.
21+ with proper Cannabis Control Commission or DPH Registration	Legalized.	Legalized.	Legalized.
21 + w/o CCC Registration	Legalized.	Civil fine of not more than \$100.	Criminal penalties available. G.L. c. 94C, § 34.
21+ w/ Medical Caregiver ID	Legalized	Legalized if acting on behalf of registered patient with active certification verified through CJIS	Legalized up to amount authorized by patient's healthcare provider if caregiver acting on behalf of registered patient with active certification verified through CJIS
18+ w/ Medical Patient ID	Legalized if active certification verified through CJIS	Legalized if active certification verified through CJIS	Legalized up to amount authorized by patient's healthcare provider if patient has active certification verified through CJIS
18-20	Civil fine of not more than \$100 and completion of drug awareness program.	Civil fine of not more than \$100 and completion of drug awareness program.	Criminal penalties available. G.L. c. 94C, § 34.
Juvenile (under 18) w/o Medical Patient ID	Civil fine of \$100, mandatory drug education program and notification of parents or legal guardian. If under 17 at the time of the offense, failure to complete a drug awareness program within a year may be a basis for delinquency proceedings.	Civil fine of \$100, mandatory drug education program and notification of parents or legal guardian. If under 17 at the time of the offense, failure to complete a drug awareness program within a year may be a basis for delinquency proceedings.	Delinquency proceedings available. G.L. c. 94C, § 34.
Juvenile (under 18) w/ Medical Patient ID	Legalized if active certification verified through CJIS in the presence of registered caregiver	Legalized if active certification verified through CJIS in the presence of registered caregiver	Legalized if in the presence of registered caregiver up to amount authorized by patient's healthcare provider if patient has active certification verified through CJIS

POSSESSION OF MARIJUANA WITHIN PRIMARY RESIDENCE

The law governing possession of marijuana within a person's primary residence was not changed by the Chapter 55 amendments. The adult use marijuana law permits a person over the age of 21 to possess up to 10 ounces of marijuana inside his or her own primary residence, and permits the lawful possession of additional quantities that have been lawfully cultivated (grown) on the premises. See G.L. c. 94G, § 7(a)(2). A person under the age of 21 may not possess any amount of marijuana, whether inside or outside his or her primary residence, unless they are a registered patient with a Medical Use of Marijuana Program ID and active certification. Note also that a person may only have one "primary

residence” at a time, and the question of whether a given location is a person’s primary residence is one that is subject to circumstantial proof.

Whether a given quantity of marijuana was lawfully cultivated on the premises is also a question subject to circumstantial proof. If the subject has no apparent grow operation on the premises, or has large quantities of fresh marijuana that appear wholly inconsistent with the quantity that could have been produced by the small number of plants on the premises, or if the fresh marijuana is a different strain than the marijuana plants on the premises, the facts may be sufficient for police to conclude that the subject has not abided by the safe harbor requirements of the law. In that case, any amount of marijuana on the premises in excess of one ounce would be unlawfully possessed.

Moreover, the safe harbor for possessing marijuana in the home applies only to marijuana possessed for lawful purposes, such as personal use. Possession of any quantity of marijuana with intent to sell remains a crime in the absence of a license issued by the Department of Public Health or the Cannabis Control Commission. If a person possessing marijuana is not a registered dispensary agent or marijuana establishment agent acting in an official capacity on behalf of a licensee, and there is sufficient evidence to prove that the marijuana is intended for

1. sale of any quantity to another party (distribution “for remuneration”); or
2. gifting (distribution “without remuneration”) of more than one ounce to another party; or
3. transfer of any quantity to a person under 21;

then the person may be charged with Possession of a Class D Substance with Intent to Distribute, pursuant to G.L. c. 94C, § 32C. If the quantity possessed exceeds fifty pounds, the person may be charged with Trafficking in Marijuana, pursuant to G.L. c. 94C, § 32E(a)(1).

The adult use marijuana law requires that any quantity of marijuana exceeding one ounce be kept under lock and key. A violation of this requirement, however, is subject only to a civil fine of \$100, and forfeiture of the marijuana, and does not make the possession subject to criminal prosecution. G.L. c. 94G, § 13(b).

CULTIVATION

Cultivation in a Primary Residence

Where previously the “cultivation” of any amount of marijuana constituted a violation of G.L. c. 94C, § 32C, the adult use marijuana law now permits a person 21 or over to cultivate up to 6 marijuana plants in his or her primary residence for personal use. A maximum of 12 marijuana plants may be lawfully cultivated for personal use in a single residence if there are two or more persons over 21 engaged in growing activity that reside in the home. Personal use is strictly limited to use by the individual growing the marijuana or small scale (under one ounce), non-remunerated “gifting.”

A person who grows more than the allowed individual personal use maximum of six plants, but less than the *household* maximum of twelve plants, is subject only to a civil penalty of \$100, see G.L. c. 94G, § 13(e), and not to criminal prosecution. A person who cultivates more than the household limit of twelve plants, however, has violated G.L. c. 94C, § 32C and is subject to criminal prosecution. Be aware that an exception may apply if the private residence is located on a property identified as a cultivation operation (i.e., a farm) licensed by the Cannabis Control Commission.

A personal caregiver registered with the Department of Public Health may cultivate for one patient only either at the patient’s primary residence or the caregiver’s own residence. 105 CMR

725.035(B)(4). The caregiver may only cultivate an amount sufficient to maintain the patient's authorized sixty-day supply as certified by their healthcare provider. 105 CMR 725.035(G). An institutional caregiver (an employee of a hospice program, long term care facility, or hospital providing care to a registered qualifying patient on the premises of a long term care facility, hospital or through a hospice program) may not cultivate on behalf of a patient. 105 CMR 725.025(B)(2)(c).

No place other than a primary residence may be used for the cultivation of marijuana in the absence of an applicable license granted by the Cannabis Control Commission or the Department of Public Health. Accordingly, a person who grows marijuana for personal use, even a small quantity, in a rented storage area, at his workplace, or at any location other than his or her primary residence remains subject to criminal prosecution pursuant to G.L. c. 94C, § 32C.

The law requires that home-grow cultivation be conducted in a manner that is not visible from a public place without the use of aircraft, binoculars, or other optical aids, and that marijuana plants be secured under lock and key or other appropriate security device. Violation of these requirements is subject only to a civil fine of \$300 and forfeiture of the marijuana, but does not make the grower subject to criminal prosecution. See G.L. c. 94G, § 13(a). If there is sufficient evidence that any quantity of marijuana is being grown for unlawful distribution, even if it is within the grower's primary residence, the grow operation would remain criminal pursuant to G.L. c. 94C, § 32C.

Cultivation in Licensed Premises

Marijuana may be cultivated by a registered marijuana dispensary, a marijuana cultivator, a craft marijuana cooperative or a microbusiness. These businesses may transport marijuana to other licensed businesses, such as marijuana product manufacturers, marijuana retailers and independent testing laboratories. The registered marijuana dispensaries are also permitted to deliver marijuana to registered patients, personal caregivers or caregiving institutions.

DISTRIBUTION

As noted above, the new adult use marijuana laws allow persons not licensed by the Cannabis Control Commission to "gift" marijuana in quantities under one ounce, but not to *sell* marijuana in any quantity. Attempts to evade the gifting safe harbor with delayed or disguised payments, contemporaneous reciprocal "gifts" of money or items of value, or other sham transactions, remain criminal offenses. See G.L. c. 94C, § 32C.

Simply put, where a person is not operating under the required license, any of the following forms of marijuana distribution for adult use remain criminal offenses:

1. giving or selling any amount of marijuana to a person under 21 in any circumstance, even if possession by the purchaser is non-criminal;
2. selling marijuana in any amount, to any person, of any age, for any form of remuneration;
3. "gifting" more than one ounce to any person, of any age.⁵

⁵ Personal caregivers are permitted to cultivate marijuana at their own home on behalf of a patient and are permitted to purchase marijuana for the patient at a registered marijuana dispensary, as well as transport the purchased marijuana to the patient. The personal caregiver is not permitted to sell marijuana to his or her patient, but may be reimbursed for the expenses incurred in purchasing or cultivating the marijuana on the patient's behalf. 105 CMR 725.025(A)(2)(g)

Distribution and Consumption in a Licensed Premises

Only marijuana retailers are permitted to sell marijuana or marijuana products for adult use directly to consumers. 935 CMR 500.050(5)(a)1. A marijuana retailer may not sell more than 1 ounce of marijuana or 5 grams of marijuana concentrate to a consumer per transaction. 935 CMR 500.140(4). A registered marijuana dispensary may sell only to registered patients with active certifications or a personal caregiver acting on a patient's behalf, and they may only sell the amount authorized by the patient's healthcare provider. 105 CMR 725.105(F).

A registered marijuana dispensary may administer marijuana only for the purpose of teaching patients use of vaporizers or to demonstrate use of other products as necessary. 105 CMR 725.105(N)(8). At this time, an adult use marijuana establishment may not permit onsite consumption. 935 CMR 500.050(5)(a)1.

Both registered marijuana dispensaries and marijuana establishments are prohibited from giving away marijuana. 105 CMR 725.105(N)(4); 935 CMR 500.105(4)(b)(6).

UNLICENSED CULTIVATION AND DISTRIBUTION OF MARIJUANA

The following is a summary of the limits and penalties spelled out in the preceding three sections. The information noted in red indicates a change made by the Chapter 55 legislation to the original provisions of the Question 4 ballot initiative.

	Gifting or Possession with Intent to Gift, Under 1 Oz.	Gifting or Possession with Intent to Gift, 1 Oz. or more	Unlicensed Sale or Possession with Intent to Sell any quantity	Cultivation of 6 or fewer plants, at primary residence	Cultivation of 7-12 plants, at primary residence	Cultivation of 12+ plants, at primary residence	Cultivation at location other than primary residence
21 +	Legalized.	Criminal penalties available. G.L. c. 94C, § 32C.	Criminal penalties available. G.L. c. 94C, § 32C.	Legalized.	Legalized if two or more persons over 21 are engaged in cultivation. If not, civil fine of \$100, and forfeiture of excess marijuana, unless registered patient or personal caregiver and amount is appropriate to 1 patient's certified supply.	Criminal penalties available. G.L. c. 94C, § 32C, unless registered patient or personal caregiver and amount is appropriate to 1 patient's certified supply.	Criminal penalties available. G.L. c. 94C, § 32C.

18-20	Civil fine of \$100 and completion of drug awareness program.	Criminal penalties available. G.L. c. 94C, § 32C.	Criminal penalties available. G.L. c. 94C, § 32C.	Civil fine up to \$100 and completion of a drug awareness program, unless registered patient	Civil fine up to \$100 and completion of a drug awareness program.	Criminal penalties available. G.L. c. 94C, § 32C.	Criminal penalties available. G.L. c. 94C, § 32C.
Juvenile (under 18)	Civil fine of \$100, mandatory drug awareness program and notification of parent or legal guardian.	Delinquency proceedings available. G.L. c. 94C, § 32C.	Delinquency proceedings available. G.L. c. 94C, § 32C.	Civil fine up to \$100, completion of drug awareness program and notification of parent or legal guardian. If under 17 at time of offense and fails to complete the program within a year, subject to delinquency proceedings.	Civil fine up to \$100, completion of drug awareness program and notification of parent or legal guardian. If under 17 at time of offense and fails to complete the program within a year, subject to delinquency proceedings.	Delinquency proceedings available. G.L. c. 94C, § 32C.	Delinquency proceedings available. G.L. c. 94C, § 32C.

TRAFFICKING, MONEY LAUNDERING, AND FORFEITURE

Chapter 94G of the General Laws and the Cannabis Control Commission regulations at 935 CMR 500.000 establish the licensing, registration and operational structure under which marijuana establishments and marijuana establishment agents may legally cultivate, manufacture and sell marijuana in Massachusetts. Similarly, registered marijuana dispensaries are authorized to legally cultivate, manufacture, and sell marijuana pursuant to Chapter 369 of the Acts of 2012 and 105 CMR 725.000, et. seq.

Marijuana trafficking continues to be illegal. Unregistered persons who possess fifty pounds or more with intent to sell remain subject to prosecution for a felony trafficking offense pursuant to G.L. c. 94C, § 32E(a)(1). Financial transactions involving the proceeds of felony Trafficking activity remain criminal Money Laundering in violation of G.L. c. 267A, § 2, and the funds associated with such transactions remain subject to seizure and forfeiture. Transactions involving the proceeds of misdemeanor offenses (which include most smaller marijuana sales) do not constitute Money Laundering, but the proceeds of such illegal sales remain subject to forfeiture pursuant to G.L. c. 94C, § 47.

SCHOOL ZONES

The School Zone statute remains intact: it was not modified by the ballot initiative or by the Chapter 55 amendments. Accordingly, any person convicted of a Distribution, Possession with Intent, or Trafficking offense involving marijuana while within a School Zone or Park Zone may face the enhanced penalties of G.L. c. 94C, § 32J.

USE OF JUVENILES TO DISTRIBUTE MARIJUANA

Marijuana remains a Class D controlled substance under Massachusetts law, and possession of marijuana has not been legalized for minors. It therefore remains a felony offense for any person, licensed or unlicensed, to cause, induce, or abet a person under the age of 18 to distribute marijuana, or to possess with intent to distribute marijuana (e.g., by employing a juvenile as a drug runner for their organization, or by supplying a juvenile drug dealer with marijuana for resale). See G.L. c. 94C, § 32K.

ATTEMPTS TO PROCURE MARIJUANA BY UNDERAGE PARTIES

Persons under the age of 21, whether they are adults (18 or over) or juveniles (under 18), who attempt to purchase or procure any quantity of marijuana are subject to a civil fine of \$100 and required completion of a drug awareness program. See G.L. c. 94G, § 13(f). If the offender is under 17 at the time of the offense, failure to complete a drug awareness program within a year may be a basis for delinquency proceedings.

In addition, the parent or guardian of a person under the age of 18 shall be notified. The only exception is for patients who hold a Program ID card and an active certification verified through CJIS, who are authorized to purchase medical use marijuana from a registered medical marijuana dispensary. Persons under 18 may only purchase or possess marijuana in the presence of their registered personal caregiver.

SALE OF MARIJUANA-RELATED DRUG PARAPHERNALIA

The adult use marijuana law makes it lawful for a person 21 years or older to possess, manufacture, purchase or otherwise obtain marijuana accessories. G.L. c. 94G, § 8. It is no longer illegal to sell bongs, or pipes, or hydroponic equipment intended to facilitate marijuana cultivation to persons over the age of 21. See G.L. c. 94G, § 8.

Sale of (or possession with intent to sell) such paraphernalia to persons who are over 18 but under 21 remains a misdemeanor under G.L. c. 94C, § 32I(a), while sale to persons under the age of 18 remains a felony. See G.L. c. 94C, § 32I(b). Again, the exceptions are for sale to registered patients with a Program ID card and an active certification verified through CJIS.

A person under the age of 21 who purchases or attempts to purchase marijuana-related drug paraphernalia may be subject to a civil fine of \$100 and may be required to complete a drug awareness program, but may not be criminally charged. See G.L. c. 94G, § 13(f). The same exceptions apply for registered patients with a Program ID card and an active certification verified through CJIS.

Mere possession of drug paraphernalia remains non-criminal in Massachusetts, though it may be compelling circumstantial evidence either of intent to consume marijuana, or of intent to cultivate or distribute, depending on the nature of the paraphernalia.

OPERATING UNDER THE INFLUENCE

The adult use marijuana law makes no change in the longstanding criminal prohibition against operating a motor vehicle under the influence of marijuana. This remains a criminal offense pursuant to terms of G.L. c. 90, § 24(1)(a)(1). See G.L. c. 94G, § 2(a).

Though the adult use marijuana law makes the consumption of marijuana broadly legal for persons over 21, evidence of recent marijuana consumption remains admissible in OUI prosecutions,

much as evidence that a defendant was seen drinking alcohol in a bar shortly before his motor vehicle stop is admissible in an OUI-Liquor prosecution. Accordingly, in OUI-Drugs investigations, police officers may continue to seize evidence of a suspect's marijuana consumption (such as a partially-burned "roach" in a vehicle ashtray) as evidence, just as they may appropriately seize an empty beer can from the floor of an OUI-Liquor suspect's vehicle as evidence of recent alcohol consumption.

MARIJUANA IN VEHICLES

The adult use marijuana law prohibits possession of an "open container" of marijuana in the passenger area of a motor vehicle while the vehicle is on a public way, whether or not the car is moving at the time. Violators may be subject to a civil penalty of not more than \$500. See G.L. c. 94G, § 13(d). Accordingly, any police officer who observes a driver or passenger smoking or consuming marijuana or marijuana products in a motor vehicle may lawfully effectuate a motor vehicle stop or initiate a threshold inquiry in order to identify the party and issue a citation. Marijuana that is in a sealed container, or which is secured in a vehicle's trunk or locked glove compartment, is not subject to such a civil penalty.

SECURITY REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS

The Cannabis Control Commission began issuing licenses in June 2018 to operate "marijuana establishments" of various types as well as registrations for marijuana establishment agents employed by or volunteering at marijuana establishments. License categories will include marijuana cultivators, product manufacturers, transporters, and retailers. Marijuana establishments licensed as retailers will be required to make reasonable efforts to verify that their patrons are 21 or older and ensure that they do not dispense marijuana to a person under the age of 21. See G.L. c. 94G, §§ 9, 12; 935 CMR 500.110.

In addition, licensed marijuana establishments must adhere to strict security requirements that are intended to deter and prevent unauthorized access into areas containing marijuana and theft of marijuana. See 935 CMR 500.110. Marijuana establishment licensees are required to share and update security plans with local law enforcement and fire services. The regulations require the use of 24-hour video surveillance and retention of video in a secure location that shall be made accessible to law enforcement in the course of an investigation, as well as "limited access areas" accessible only to specific personnel, law enforcement, first responders and the Commission. Licensed marijuana establishments must also adopt emergency policies and procedures for securing all product in the event of a diversion or theft of marijuana, among others. See 935 CMR 500.110 (5), (6).

Law enforcement and the Commission must be immediately notified of any breach of security, including diversion, theft or loss of marijuana from the marijuana establishment; any suspicious act involving the sale, cultivation, distribution or processing of marijuana by any person, including employees; the unauthorized destruction of marijuana; and the discovery of discrepancies during inventory, among others. See 935 CMR 500.110 (7)(a). Licensed marijuana establishments are required to retain and make available all documentation related to a reported incident for at least one year or the duration of an open investigation, whichever is longer. Annual independent security audits of marijuana establishments are required for license renewal. The contact number of the Commission is (617) 701-8400.

VIOLATIONS BY LICENSED MARIJUANA ESTABLISHMENTS

A licensee or registered marijuana establishment agent that willfully fails to comply with the obligation to check identification of customers or that engages in marijuana transactions outside those authorized by the regulations may be subject to criminal prosecution in addition to any administrative

actions (e.g., suspension or revocation) taken against the license or registration by the Cannabis Control Commission.

For instance, knowingly or intentionally furnishing marijuana to a minor will expose a registered marijuana establishment agent to a fine of up to \$2,000 and/or imprisonment for up to one year. G.L. 94G, § 13. Further, selling any amount of marijuana outside the scope of the specific license (i.e., cultivator, manufacturer, or retail) may constitute illegal distribution, which may subject the seller to the same penalties outlined in the chart on pages 8 and 9 of this letter. By way of example, an employee of a cultivation facility who sells any quantity of marijuana without a retail license or an employee of a marijuana retailer who sells marijuana “under the table” to avoid taxes on the transaction may be guilty of illegal distribution offenses and subject to both criminal prosecution and the revocation of any marijuana establishment agent registration. The actions of employees of licensed marijuana establishments may also implicate the license status of the establishment and subject licensees to criminal prosecution.

PUBLIC CONSUMPTION OF MARIJUANA

Before adoption of the adult use marijuana law, municipalities had the authority, but not the obligation, to prohibit public consumption of marijuana. Under the adult use marijuana law, consumption of marijuana (other than medical marijuana) in any public place is prohibited. Smoking of marijuana is also prohibited in any place where tobacco smoking is prohibited (such as private offices, bars and restaurants, see G.L. c. 270, § 22). A violation of either prohibition may result in a civil penalty of not more than \$100. See G.L. c. 94G, § 13(c).

Existing municipal bylaws or ordinances prohibiting public marijuana consumption will remain in force and effect unless they directly conflict with a specific provision of the adult use marijuana law. See G.L. c. 94G, § 3.

The adult use marijuana law contemplates that the Cannabis Control Commission may license so-called “social consumption” establishments for the consumption of marijuana purchased on premises. At this time, however, the Commission has deferred action on this license category. Social consumption of marijuana for adult use is strictly prohibited in the regulations in effect at the time of this writing. This means that there is currently no legal authority for the sale of marijuana products for on-site consumption, and any marijuana establishment permitting on-site consumption is operating outside the terms of its licensed authority. A registered marijuana dispensary may administer marijuana only for the purpose of teaching patients use of vaporizers or to demonstrate use of other products as necessary. 105 CMR 725.105(N)(8). If the Commission issues social consumption establishment licenses in the future, the adult use marijuana law provides a limited allowance for public consumption of marijuana within the confines of a properly licensed social consumption establishment. See G.L. c. 94G, § 13(c).

MARIJUANA USE AND FIREARMS LICENSING

General language in the adult use marijuana law provides that “a person 21 years or older shall not be . . . disqualified under the laws of the Commonwealth in any manner, or denied any right or privilege” for lawfully possessing, cultivating, or giving away marijuana. See G.L. c. 94G, § 7(a)(1)-(4). Accordingly, marijuana-related activity that the adult use marijuana law has made legal cannot constitute a firearms licensing *disqualification* under Massachusetts law, nor can marijuana-related activity that is illegal, but non-criminal (e.g., possession of 1 ½ ounces of marijuana by a person over 21 years old, punishable as a civil offense only). As I noted in my directive to the Firearms Records Bureau on October 8, 2015, past criminal convictions involving the possession of one ounce or less of marijuana should no longer be viewed as a *disqualification* in a firearms license application.

At the same time, however, in addition to reviewing an applicant's past record for possible disqualifying offenses, a licensing authority is required to assess the *current suitability* of an applicant for a License to Carry or a Firearms Identification Card. In making this evaluation, a licensing authority can and should consider any evidence of an applicant's habitual, excessive consumption of intoxicating substances, which may make an applicant unsuitable in some cases even when the use of those substances (like alcohol and marijuana) has been broadly legalized under state law. See Ceeley v. Firearms Licensing Review Board, 78 Mass. App. Ct. 1125 (2011), 2011 WL 445841 (upholding board's determination that applicant was "unsuitable" for restoration of his firearms rights, based in part on his "long history of alcohol abuse"). cf. 27 C.F.R. 478.11 (federal regulation defining the phrase "[u]nlawful user of and addicted to any controlled substance" as including "[a] person who uses a controlled substance and has lost the power of self-control with reference to the use of controlled substance").

ABUSE AND NEGLECT OF CHILDREN

The adult use marijuana law contains a provision that requires "clear, convincing and articulable evidence" that a person's actions related to marijuana have created "an unreasonable danger to the safety of a minor child" before such actions may form "the sole or primary basis for substantiation, service plans, removal or termination or for denial of custody, visitation or any other parental right or responsibility." See G.L. c. 94G, § 7(d).

This provision qualifies the manner in which a parent or caregiver's involvement with marijuana may be considered in making decisions about child protection and welfare. The provision does not change a police officer's duties as a mandated reporter pursuant to G.L. c. 119, § 51A. Accordingly, nothing in the adult use marijuana law should be viewed as preventing a police officer, in his or her capacity as a mandated reporter, from making a 51A report, as required by the statute, where there is reasonable cause to suspect that a child has been abused or neglected.

PROTECTIVE CUSTODY

The amended protective custody law, G.L. c. 111E, § 9A, which Governor Baker signed into law in July of 2017, is not affected in any way by Chapter 55 or the adult use marijuana law generally. Police officers retain the authority to take into protective custody any person who is incapacitated by the consumption of *any* drug, regardless of the age of the drug user, and regardless of whether the possession or consumption of the drug was itself illegal. Protective custody is not an arrest for a criminal act, but an emergency caretaking power designed to protect the immediate safety of the incapacitated party and the public.

FEDERAL LAW

The cultivation, possession, and distribution of marijuana in any amount remains broadly prohibited under federal law. Until recently, the Department of Justice was operating under principles outlined in its August 29, 2013 Cole Memorandum, which stated that where marijuana cultivation and distribution is conducted in compliance with state law and under a strong and effective state regulatory system, enforcement of the federal criminal laws prohibiting marijuana possession and distribution should be a relatively low priority for federal prosecutors. Following the DOJ's recent rescission of the Cole Memorandum, we are uncertain as to how the federal government will proceed with its enforcement authority under the Controlled Substances Act.

State and local law enforcement officers should keep in mind that their primary obligation is to enforce the laws of the Commonwealth and to protect the citizens of the Commonwealth. This is undoubtedly an area that will require new policies as warranted by developments on the ground.

Thank you, as always, for your commitment to our shared mission.

Sincerely,

A handwritten signature in black ink that reads "Daniel Bennett". The signature is written in a cursive style with a long, sweeping horizontal line extending from the end of the name.

Daniel Bennett
Secretary